IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE BILAL NAZKI

and
THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.16863 of 2005

Between:

M/s.Healing Touch Hospital (P) Limited,

Represented by its Managing Director

Dr.Y.Ravinder Rao,

near Clock Tower, Secunderabad.

.....PETITIONER

AND

1.The Commissioner of Customs and Central excise,

Hyderabad-II Commissionerate,

L.B.Stadium Road, Basheerbagh,

Hyderabad, and another.

.....RESPONDENTS

ORDER: ***(Per Hon'ble Sri Justice Bilal Nazki)***

Heard learned Counsel for the parties and perused the record.

In this writ petition, the order of the Deputy Director General (Medical) passed on behalf of the second respondent, has been challenged.

The facts, which are necessary for disposal of this Writ Petition, are summarized briefly:

Petitioner is a hospital represented by its Managing Director and it obtained a Certificate from respondent No.2 for grant of exemption from payment of Customs Duty. This exemption was granted, admittedly, by the Government, but was a contented one in furtherance to the policy of the Government of India that the hospitals should be able to import equipments at a cheaper cost. Keeping in view the health care of the people, the Government of India devised schemes so that these hospitals should import equipment without paying the Customs Duty and should also take care of the population, which cannot otherwise afford treatment at Corporate Hospitals. When the permissions were granted for import of such equipment without payment of duty, various conditions were imposed. Two conditions are pertinent for the purpose of disposal of this Writ Petition. One condition was that these hospitals should give their treatment on an average, to atleast 40% of all their outdoor patients. Second condition was that they shall give free treatment to all indoor patients belonging to families with an income of less than Rs.500/- per month and for

this purpose, they shall reserve at least 10% of all the hospital beds for such patients. Once the scheme was implemented, the difficulties arose and matters went even up to the Supreme Court.

In ***Mediwell Hospital & Health Care Pvt. Ltd. Vs. Union of India***, the Supreme Court held that these concessions had to be given on the continued basis, and it was an obligation on the hospitals to adhere to these conditions. The Director of Health Services was also directed to monitor whether these conditions were being fulfilled by the hospitals, which were given the concession on importing equipment without payment of duty.
It appears that the present petitioner was also given a notice by respondent No.2 on 28-1-1999. This letter made it clear that information was being sought from the petitioner, in order to ensure whether the conditions agreed at the time of importation for grant of exemption were being fulfilled or not. The subject of the letter was fulfillment of conditions of notification No.64/88-Cus., dated 01-03-1988. In the last para, it was mentioned that the information sought for should reach within a specific period of time, (and) if no opinion is received within the said period, it would be presumed that the petitioner is no longer interested in retaining CDECs issued earlier for hospital equipments under notification No.64/88-Cus., dated 01-03-1988.

The first ground of attack on the impugned order by the learned Counsel for the petitioner was that before withdrawing the exemption, no notice was given to him. This is belied by notice dated 28-01-1999, to which a reference has been given by us hereinabove. It has not been disputed that this notice was received by the petitioner. As a matter of fact, petitioner-Hospital could have not disputed it, because, in response to it, they sent their reply also. In the counter, it is pointed out that petitioner sent letters to respondent No.2 on 01-02-1999, 16-02-1999, 24-05-1999,

10-09-1999 and 13-11-1999.

The second argument is that the order impugned was not served on the petitioner. This may or may not be a fact. Whether it was specifically served by the respondent No.2 on the petitioner or not, but there is sufficient material on record to show that a copy of the order was available to the petitioner on 01-05-2003, because on the basis of the order passed by the second respondent, the Commissioner of Customs Duty issued a notice and raised a demand. He raised a demand solely on the basis of the impugned order and copy of impugned order was served on the petitioner. This also cannot be denied because immediately thereafter, the petitioner took steps to challenge the demand raised by the Customs Department before the appropriate forum, and we are told that an appeal is still pending. The respondents have, along with their counter, filed a copy of an acknowledgment, which is the acknowledgment of the notice of demand raised by the Customs Department. Petitioner has acknowledged the demand notice in following terms**:**

> "Received the Show Cause notice No. ICNO SG/REF/MED/12/98-CUS (SIIB) dt.29-04-2003 along with the relied upon documents"

The show cause notice itself refers to the order impugned in this Writ Petition. Petitioner was in possession of the impugned order on 01-05-2003, but he did not choose to challenge the order till 2005. This delay is also not explained.

Now coming to the impugned order, the parties concerned have not relied on any material other than material supplied by the petitioner, and have come to the conclusion that the percentage of free OPD treatment for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998 was 13%, 25%, 45%, 50.12%, 44.47%,

40%, 40.39%, 21.22% and 24.57% respectively, and the percentage of free indoor treatment of patients, whose income was less than Rs.500/- per month, for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998 was 2.9%, 4.05%, 5.18%, 8.54%, 7.29%, 8.55% and 8.15% respectively. Even these figures have not been doubted.

Learned Counsel for the petitioner has relied on various judgments of the Apex Court reported in ***Canara Bank vs. Debasis Das, State Govt. Houseless Harijan Employees Assn. vs. State of Karnataka, Style (Dress Land) vs. Union Territory, Chandigarh, Basudeo Tiwary vs. Sido Kanhu University and Mediwell Hospital & Health Care Pvt. Ltd., vs. Union of India,*** and learned Counsel for the respondents has relied on an unreported judgment of this Court in ***W.P.No.34694 of 1997 and batch, dated 26-10-2005***, and also on the judgment of the Apex Court in ***Mediwell Hospital & Health Care Pvt. Ltd., vs. Union of India*** (5th cited supra). But, in view of what has been stated by us herein above, it is not necessary for us to go into these judgments.

Writ Petition is devoid of any merit, and is, accordingly, dismissed. No costs.

(Bilal Nazki, J)

12th December, 2005

(S.Ananda Reddy, J)

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